

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed April 28, 2005. Claims 1-19 were pending in the Application. In the Office Action, Claims 1-19 appear to be rejected. Claims 1-19 remain pending in the Application. Applicant respectfully requests reconsideration and favorable action in this case.

In the Office Action, the following actions were taken or matters were raised:

CLAIMS 8 AND 15

In the Office Action Summary, the Examiner indicates that Claims 8 and 15 are allowed. However, in the remaining portions of the Office Action, the Examiner appears to indicate that Claims 8 and 15 are rejected under 35 U.S.C § 102(e) (Office Action, page 2). Applicant respectfully requests clarification from the Examiner as to the status of Claims 8 and 15.

SPECIFICATION OBJECTIONS

The specification was objected to for informalities. The Examiner suggested that Applicant provides the serial numbers of all co-pending applications mentioned on pages 1 and 2 of the disclosure. Applicant has amended pages 1 and 2 of the specification to include the serial numbers of the respective noted co-pending applications. Applicant respectfully requests that this objection be withdrawn.

SECTION 102 REJECTIONS

Claims 1, 5-9, 15 and 16 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,279,113 issued to Vaidya (hereinafter "*Vaidya*"). As discussed above, the Office Action Summary appears to indicate that Claims 8 and 15 are allowed. However, page 2 of the Office Action appears to indicate that Claims 8 and 15 are rejected in view of *Vaidya*. Thus, Applicant presumes that the Examiner means to reject Claims 8 and 15 in view of *Vaidya*, and Applicant responds accordingly. Applicant respectfully traverses this rejection.

Of the rejected claims, Claims 1 and 9 are independent. Applicant respectfully submits that *Vaidya* does not disclose or even suggest each and every limitation of independent Claims 1 and 9.

Applicant respectfully reminds the Examiner that the burden for proving anticipation under 35 U.S.C. § 102 is on the Examiner, and it is the Examiner who has to prove that a claim is not patentable. In rejecting independent Claim 1 (and remaining Claims 5-9, 15 and 16), the Examiner has not provided sufficient reasoning or made any assertions as to why he believes that the portions of *Vaidya* referred to by the Examiner disclose particular limitations of Claim 1. The Examiner merely provides a general recitation of column and line numbers of *Vaidya*, leaving Applicant guessing as to the Examiner's intended meaning. For example, with respect to Applicant's Claim 1 recitation of "monitoring, by a first layer of an intrusion prevention system, application data of applications running at on the node," "monitoring, by a second layer of the intrusion prevention system, transport layer data of the node" and "monitoring, by a third layer of the intrusion prevention system, network layer data of the node," the Examiner merely states "see Col 4 Line 29-31" (Office Action, page 2) without indicating which components of *Vaidya* the Examiner is relying on to purportedly teach, for example, "a first layer of an intrusion prevention system," "a second layer of the intrusion prevention system," or "a third layer of the intrusion prevention system" as recited by Claim 1. Because the Office Action fails to provide any indication of which components of *Vaidya* are relied upon by the Examiner to purportedly teach the limitations of Claim 1, Applicant finds it difficult, if not impossible, to adequately address the Examiner's rejection. Applicant requests the Examiner to clearly indicate which components of *Vaidya* the Examiner is relying on to purportedly teach the limitations of Claim 1 so that Applicant may have a fair opportunity to address the Examiner's concerns.

Regardless, Applicant submits that *Vaidya* does not disclose or even suggest each and every limitation of independent Claim 1. For example, independent Claim 1 recites "monitoring, by a first layer of an intrusion prevention system, application data of applications running at on the node," "monitoring, by a second layer of the intrusion prevention system, transport layer data of the node" and "monitoring, by a third layer of the

intrusion prevention system, network layer data of the node” (emphasis added). The portions of *Vaidya* referred to by the Examiner fail to disclose or even suggest at least these limitation(s) recited by independent Claim 1, and Applicant is unable to determine why the Examiner believes that the portions of *Vaidya* referred to by the Examiner purportedly teach at least these limitation(s). For example, column 4, lines 29-31, of *Vaidya* recite:

An advantage of the present invention is that all seven layers of the OSI model are monitored and so an attack based in any of the layers can be detected.

Applicant respectfully submits that monitoring “all seven layers of [an] OSI model” as recited by the portion of *Vaidya* indicated above is not the same as “an intrusion prevention system” having different layers (e.g., a first layer for monitoring application data, a second layer for monitoring transport layer data, and a third layer for monitoring network layer data as generally recited by independent Claim 1). The Examiner has not explicitly identified any disclosure in *Vaidya* identifying different layers of an intrusion prevention system for monitoring different layers and/or types of data of a node as generally recited by independent Claim 1. Applicant respectfully submits that such details are lacking in *Vaidya*, and the Office Action fails to explain why the Examiner believes that such details are present in *Vaidya*. Therefore, for at least this reason, Applicant respectfully submits that *Vaidya* does not anticipate Claim 1.

Independent Claim 9 recites “monitoring application layer data, by a first layer of an intrusion prevention system comprised of the instructions, of a node of a network,” “monitoring transport layer data, by a second layer of the intrusion prevention system, of the node of the network” and “monitoring network layer data, by a third layer of an intrusion prevention system, of the node of the network” (emphasis added). At least for the reasons discussed above in connection with independent Claim 1, Applicant respectfully submits that *Vaidya* does not disclose or even suggest each and every limitation of independent Claim 9, nor has the Examiner explicitly identified such limitations in *Vaidya*. Accordingly, Applicant respectfully submits that *Vaidya* does not anticipate independent Claim 9.

Claims 5-8, 15 and 16 that depend respectively from Claims 1 and 9 are also not anticipated by *Vaidya* at least because they incorporate the limitations of respective Claims 1 and 9 and, also, they add additional elements that further distinguish *Vaidya*. Therefore, Applicant respectfully requests that the rejection of Claims 5-8, 15 and 16 be withdrawn.

SECTION 103 REJECTIONS

Claims 2-4, 10-13 and 17-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Vaidya* in view of U.S. Patent No. 6,851,061 issued to Holland III et al. (hereinafter "*Holland*"). Applicant respectfully traverses this rejection.

Claims 2-4 and 10-13 depend respectively from Claims 1 and 9. At least for the reasons discussed above, Claims 1 and 9 are in condition for allowance. Therefore, Claims 2-4 and 10-13 that depend respectively therefrom are also in condition for allowance. Accordingly, Applicant respectfully requests that the rejection of Claims 2-4 and 10-13 be withdrawn.

Of the remaining rejected claims, Claim 17 is independent. Applicant respectfully submits that neither *Vaidya* nor *Holland*, alone or in combination, discloses, teaches or suggests the limitations of independent Claim 17. For example, independent Claim 17 recites "an operating system comprising a network stack comprising a protocol driver, a media access control driver . . . and an intrusion prevention system transport service provider layer" (emphasis added). The Examiner appears to indicate that *Vaidya* does not disclose at least the above-referenced limitations of independent Claim 17 ("*Vaidya* discloses an [sic] processor, memory module . . . but does not disclose the use of drivers to monitor network layer, transport layer interface" (Office Action, page 5). However, the Examiner also appears to indicate that *Holland* discloses such limitations (Office Action, page 5). Applicant respectfully disagrees. *Holland* appears to disclose an internal protocol (IP) stack 33 for processing incoming data frames (*Holland*, column 4, lines 41-44, figure 2). *Holland* also appears to disclose, and the Examiner appears to refer to, a packet filter 37 of *Holland* used to collect all network traffic transiting through the NIC 31 of *Holland*, and an auditing system 34 for monitoring system-level activities (Office Action, page 5, *Holland*, column 4, lines 41-

55, figure 2). However, neither the packet filter 37 or auditing system 34 of *Holland* appear to form any portion of “a network stack.” Thus, *Holland* does not appear to disclose or even suggest “a network stack comprising a protocol driver, a media access control driver . . . and an intrusion prevention system transport service provider layer” as recited by independent Claim 17 (emphasis added), nor does the Examiner appear to explicitly identify any such disclosure in *Holland*. Moreover, *Vaidya* does not remedy at least this deficiency of *Holland*. Accordingly, for at least this reason, Applicant respectfully submits that neither *Vaidya* nor *Holland*, alone or in combination, discloses, teaches or suggests the limitations of independent Claim 17. Therefore, Applicant respectfully requests that the rejection of Claim 17 be withdrawn.

Claims 18 and 19 depend from independent Claim 17. At least for the reasons discussed above, Applicant respectfully submits that Claim 17 is in condition for allowance. Therefore, Claims 18 and 19 that depend therefrom are also in condition for allowance. Accordingly, Applicant respectfully requests that the rejection of Claims 18 and 19 be withdrawn.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

No fee is believed due with this Response. If, however, Applicant has overlooked the need for any fee due with this Response, the Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this Response to Deposit Account No. 08-2025 of Hewlett-Packard Company.

Respectfully submitted,

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